

educators, nonprofit programmers, children's advocates and public broadcasters. Board members would have staggered three year terms, and could appoint their successors. None of the Consortium's board members should be permitted to have *any* interest in any programmer (or programming) seeking access to the 25(b) capacity. The Consortium's employees and contractors could similarly have no relationship either to a DBS provider or to a Section 25(b) programmer.

To ensure that the Programming Consortium provides a workable mechanism for selecting Section 25(b) programming free of DBS providers' influence, it should be required to submit a report on its operations to the Commission every two years. Based on that report, the Commission may choose to modify the Consortium's operations.

B. DBS Providers Should Be Immune From Liability for Any Programming Shown on Their Section 25(b) Capacity.

As the Commission notes in its *1993 NOPR*, it has in the past held broadcast licensees harmless from liability where Congress has removed editorial control over particular programming, *i.e.*, candidate advertising. *1993 NOPR* at 41. The situation here is analogous - Congress has removed editorial control from DBS providers - and deserves an analogous solution. The Commission should therefore immunize DBS providers from any liability that might result from Section 25(b) programming.

As the Commission recognizes, there is no basis in the law for it to carve out special exceptions for "indecent" or other arguably illegal speech. *1993 NOPR* at 1597. Indeed, the U.S. Court of Appeals for the District of Columbia Circuit recently struck down the Commission's attempt to carve out an exception to Section 315(a) that would have permitted broadcasters to channel candidate advertisements they deemed "harmful to children." *Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996).

Any fears DBS providers may have about their 25(b) capacity being used for indecent programming are further ameliorated both by the type of programming permitted on this capacity, and by the DBS industry's own technology. The requirement that the programming be noncommercial, educational or informational will, for the most part, screen out arguably "indecent" programming. Moreover, DBS providers have perhaps the best built-in "lock-out" technology of any multiple channel medium.¹¹ This screening technology permits parents to prevent child access to programming based on many different factors, including program ratings and/or content. As time goes on, it is likely that this technology will become even more precise and user-friendly.

VII. THE CAPACITY AVAILABLE UNDER SECTION 25(b) MUST BE PRICED TO ENSURE BROAD, AFFORDABLE ACCESS BY NONCOMMERCIAL EDUCATIONAL PROGRAMMERS.

It is apparent from the plain language of Section 25(b) that Congress intended to make the capacity for noncommercial, educational programming widely available to, and affordable for, nonprofit and public entities. Perhaps taking a lesson from its mistakes in the 1984 Cable Act (fixed in the 1992 Cable Act), which permitted cable operators to set prices for commercial leased access,¹² Congress legislated in great detail, requiring the FCC to ensure that DBS

¹¹DBS operators have made this a major selling point, and their own advertisements boast about the availability of this technology.

¹²The 1992 Cable Act amended the leased access provisions of the Communications Act, *inter alia*, to require the FCC to "determine the maximum reasonable rates that a cable operator may establish" for using leased access channels, and to "establish reasonable terms and conditions for such use, including those for billing and collection;..." 47 USC § 612(c)(4)(A)(i-ii). The Senate Commerce Committee noted that these changes were made because "the [1984 Cable Act's] leased access provision...delegates to the cable operator the task of initially establishing rates, terms, and conditions. If the programmer does not find these reasonable, the programmer may then seek relief at the FCC and in the courts. It does not take much understanding of the incentive of the parties and the nature of the programming market to understand that such an approach has fundamental problems." S. Rep. 102-92, 102nd Cong., 1st Sess. at 31 (1991).

providers make the capacity available "upon reasonable prices, terms and conditions." It further mandated that the Commission define that term to "take into account the nonprofit character of the programming provider," 47 USC §335(b)(4)(A), and to prohibit any prices from exceeding, for any available channel, "50 percent of the total direct costs of making such channel available." 47 USC §335(b)(4)(B). In calculating the "total direct costs," the Commission is required to exclude

- (i) marketing costs, general administrative costs, and similar overhead costs....and;
- (ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

47 USC §335(b)(4)(C)(i-ii).

The importance of keeping rates low is even greater here than in the leased access context - as Congress recognized, the entities that are eligible to use this capacity will be public or nonprofit, and therefore, for the most part, will have limited financial resources. The Commission must not repeat its leased access mistake: it should set rates far below 50% of direct costs, so that the cost of access is at, or near, zero.

A. Congress Gave Express Directions For What Should Be Considered "Direct Costs."

As shown above, Congress specifically excluded certain costs from being considered "direct" costs. What the Commission must exclude from its calculation of direct costs is "marketing costs, general administrative costs and similar overhead costs...and...the revenue that [a DBS] provider might have obtained by making such channel available to a commercial provider of video programming." 47 USC §335(b)(4)(C)(i-ii).

As the Commission notes in its 1993 *NOPR* at 1599, the House Commerce Committee

also spoke to what costs it was permissible to *include*:

Direct costs include *only* the costs of transmitting the signal to the uplink facility and the direct costs of uplinking the signal to the satellite.

H.R. Rep. 102-628, 102nd Cong., 2nd Sess. at 125 (House Report) [Emphasis added].

The House Report language is significant because only the House Bill contained the direct cost language that is embodied in Section 25(b)(4). H.R. Rep. 102-862, 102nd Cong., 2nd Sess. at 99-100 (Conference Report). The use of the word "only" demonstrates that the drafters specifically considered the question, and had the specific desire to limit the costs to the enumerated items. Thus, the Commission's authority to determine direct costs is bounded by the express intent of the drafters of this provision.

However, in its 1993 *NOPR*, the Commission lists other costs not specifically mentioned in the language of legislative history that it believes might be included in the definition of direct costs, including

the proportional share of construction, launch, and insurance of the space station...the continuing costs (on a proportionate basis) of the uplink facility used to provide the channel and a proportional share of the telemetry, tracking and control costs for the space station.

1993 *NOPR* at 1599.

To include these significant costs however, would render meaningless the House Committee's directive to include "*only* the costs of transmitting the signal to the uplink facility and the direct costs of uplinking the signal to the satellite." [Emphasis added.] Moreover, adding such costs would frustrate Congress' intention that this capacity be affordable to nonprofit entities, 47 USC §335(b)(4)(A), adding such costs would frustrate that intention. Thus, the Commission must exclude any common costs, as well as any other costs that go beyond the House

Committee's definition.

B. DBS Providers Should Be Encouraged to Provide Funding For Section 25(b) Programming.

In its 1993 *NOPR*, the Commission asks whether "DBS providers may pay a program supplier for the use of its programming or may undertake various promotional activities in exchange for other consideration." 1993 *NOPR* at 1599. It asks further whether such arrangement "can be counted toward fulfilling the DBS service provider's obligations" under Section 25(b).

DAETC, *et al.*'s response to these two inquiries is a resounding "yes." But, in keeping with the requirement that DBS providers exercise no editorial over the programming under Section 25(b), they should not be permitted to give money directly to any particular programmer or programming. Permitting DBS providers to do so would, in essence, give them a hand in selecting programming, because only those programmers with sufficient funds could utilize the Section 25(b) access. Instead, the DBS provider should be encouraged to provide funding to the 501(c)(3) corporation, for the sole purpose of making grants to needy programmers. See Attachment 1 at ¶2.4.¹³

To encourage financial support for noncommercial programming, the Commission should adopt a procedure whereby a DBS provider's channel capacity obligation may be reduced in exchange for providing a certain amount of funding to the 501(c)(3). A DBS provider should be permitted to reduce its Section 25(b) obligation by one channel for every 0.5% of its gross revenues that it pays to the 501(c)(3). However, it may not, in any event, be permitted to reduce

¹³This money could not be used to pay the Consortium's overhead or administrative costs.

that capacity under the 4% requirement. For example, under the scale on p. 14, if a DBS provider has 100 video channels, it would be required to provide reserve 7 video channels under Section 25. Assuming the provider had a gross revenue of 100 million dollars, it could reduce its reservation obligation to 6 channels if it gave \$500,000, 5 channels if it gave \$1,000,000, and 4 channels if it gave \$2 million. But it could not reduce its obligation below 4 channels. Any DBS provider participating in such an arrangement would be required to file an annual report with Commission.

IX. THE COMMISSION SHOULD PUT DBS PROVIDERS ON NOTICE THAT THEY MUST MAKE CAPACITY AVAILABLE WITHIN 45 DAYS OF THE RELEASE OF THE COMMISSION'S ORDER IMPLEMENTING SECTION 25(b).

As discussed above, it has now been four and one half years since the 1992 Cable Act was passed, and over 4 years since the Commission released its *1993 NOPR*. During that time, the DBS industry has been on notice that the Commission could impose these obligations at any time. Indeed, it had not indicated any opposition to Section 25's requirements until very recently. Thus, there is no policy or legal reason why DBS providers should not make Section 25(b) capacity available soon after the Commission adopts its rules in this area. DAETC, *et al.* urge the Commission to require DBS providers to make this capacity available, within 45 of the release of its order implementing Section 25(b). This time frame will permit DBS providers to give adequate notice to their customers about impending programming changes.

In the *1993 NOPR*, the Commission requested comment on a related issue, that is, whether

DBS providers who are offering service pursuant to executed contracts with programming suppliers should have all existing services grandfathered, and be subject to the[] reservation requirements only upon the expansion of their service to include additional channels.

1993 NOPR at 1597.

But the Commission's concern at that time was with contracts executed *before* the 1992 Cable Act was passed. At that time only one DBS service, Primestar, was operable. All the other DBS services began operation after Section 25 was made law. Given that fact, and the passage of time, there is no reason to permit DBS providers to avoid their Section 25 obligations. Moreover, to subject DBS providers to their Section 25 obligations "only upon expansion" of their capacity, is to virtually guarantee that no capacity will ever be made available.

CONCLUSION

Congress' mandate for Section 25 was unusually specific and clear; the Commission is bound by that mandate. In fulfilling these Congressional directives, it need not approach Section 25 as if it were a novelty. By designing Section 25(a) to resemble over-the-air broadcasters' public interest obligations, by using cable leased and PEG access channels as the model for Section 25(b), Congress enabled the Commission to use time-tested mechanisms in structuring DBS' public service regime. Other successful legal precedents can be used in formulating, *inter alia*, the definition of "noncommercial" programming and determining what entities should be eligible to use Section 25(b) capacity.

After a four and one half year deferral in implementing Section 25, the DBS industry has grown and thrived. The public is still waiting for its dividend of public service. The Commis-

sion should promptly end this delay.

Respectfully submitted,

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April 28, 1997

ATTACHMENT 1

MASTER OPERATING AGREEMENT
BETWEEN THE TUCSON COMMUNITY CABLE CORPORATION,
COX CABLE OF TUCSON, INC.,
THE CITY OF TUCSON

This Master Operating Agreement ("Agreement"), is made and entered into as of the _____ day of _____, 1984, by and among the City of Tucson, Arizona, a municipal corporation ("City"), Cox Cable Tucson, Inc., an Arizona corporation ("Cox"), and the Tucson Community Cable Corporation, an Arizona non-profit corporation ("TCCC").

RECITALS

A. Tucson City Code, §7A-13, states that operational details and responsibilities for public access and community service cable television channels, including the City's right to designate management organizations to operate community service channels and facilities, are to be provided for in the cable television license agreement and a separate agreement between the licensee, the City, and any management organizations designated by the City.

B. As originally proposed by Cox, accepted by the City, and incorporated in Cox's license agreement, Cox was to provide "community service programming" which consolidated both public access and local origination functions.

Under its proposal, Cox was to operate all public access programs, subject to the supervision and policy-making of a consortium of local public access users. The parties to this Agreement have concluded that it would be more beneficial to subscribers, public access users, and the general public to separate public access and local origination functions, and to have public access controlled and operated by an independent third party. Accordingly, Cox has modified its proposal to provide for operation of public access by TCCC, with funding and assistance from Cox as set forth in this Agreement and in the modified portions of Cox's proposal contained in Exhibit 1, attached.

C. Article 12, Sec. 8 of the License Agreement provides that the City has the right to designate a person or organization to supervise the use of the public access and community service channels.

D. The Mayor and Council have directed the City Manager to proceed with the development of a public access corporation.

E. Pursuant to that direction, TCCC was created by the filing of Articles of Incorporation under the laws of the State of Arizona, with its stated purposes including "serv[ing] the community in the community management of access."

F. The City, Cox and TCCC desire to define the roles and responsibilities of all parties as they relate to public access. The City accepts the modifications of Cox's proposal, and Cox and the City will incorporate them in the

license agreement by a contemporaneous amendment to the
license agreement.

IN CONSIDERATION of the covenants, conditions, un-
dertakings and promises contained herein, the sufficiency of
which is fully acknowledged, the parties agree as follows:

ARTICLE ONE

DEFINITIONS

As used in this agreement:

1.1 In addition to the definitions found below, Tucson
City Code, §7A-2 Definitions, is adopted and incorporated in
this Agreement by this reference.

1.2 "Access channels" means channels, designated or
otherwise, dedicated to and exclusively set aside for the
non-commercial use of the public.

1.3 "Cablecast" means programming data transmitted
through the system to users and subscribers.

1.4 "TCCC" means the Board of Directors of the Tucson
Community Cable Corporation, unless otherwise stated.

1.5 "Membership" means membership in TCCC as defined
in TCCC's Articles of Incorporation, Article VI.

1.6 "Proposal" means (a) the Cox submission pursuant
to the City's Request for Proposals, (b) Cox's response to
the City Consultant's (CTIC) Preliminary Evaluation of that
submission, and (c) the amendment to the Proposal contained

"Issuing Authority" means the Mayor of the City of Boston.

"Leased Channel" means any channel, or portion thereof, available for lease pursuant to tariff for programming by persons other than CSBC.

"Local Origination Programming" or "Local Origination" means programming produced or acquired by CSBC for transmission by CSBC to Subscribers in Boston. Such programming shall include live, taped or alphanumeric programs.

"Monitoring" means observing a cable communications signal, or the absence of same, where the observer is not the Subscriber whose signal is being observed, whether the signal is observed by visual, aural or other electronic means.

"Municipal Channel" means any channel, or portion thereof, which has been allocated for use by the City, the Issuing Authority or his designees.

"Pay-Cable" or "Pay-Cable Services" means programming delivered for a fee or charge to Subscribers on a per-channel basis, in addition to the fee or charge to Subscribers for the Universal Basic Service.

"Pay-Per-View" or "Pay-Per-View-Services" means programming delivered for a fee or charge to Subscribers on a per-program basis, in addition to the fee or charge to Subscribers for the Universal Basic Service.

"Programming" means any video, audio, text or data coded signal carried over the Cable Television System.

"Provisional License" means the non-exclusive and provisional cable television license granted to CSBC by the Issuing Authority of the City of Boston.

"Public Institution" means any governmental institution or other institution or organization located in the City of Boston and organized and operating for purposes other than profit.

"Public Institutional Network" or "PIN" means the four hundred Megahertz (400 MHz) single trunk, bidirectional network which shall parallel the trunk distribution System design of the Subscriber Network.

"Subscriber" means a person authorized to receive programming.

approve this Agreement, Cox will deposit operating funds on the first day of the month following such approval in an amount to be determined by the formula set out in paragraph 2.12 (A), prorated from the date of Mayor and Council approval. (All amounts marked by an asterisk in this paragraph 2.1, and in paragraphs 2.2 and 2.3, will be increased by five percent on the first anniversary of Mayor and Council approval of this Agreement, and on each succeeding anniversary.)

2.2 Incentive Funds. In addition to operating funds provided under paragraph 2.1, Cox agrees to pay TCCC incentive operating funds of up to \$100,000* per calendar year. These funds will be paid as follows: For each period of two calendar weeks (Sunday through Saturday) in which new locally-produced public access programming cablecast on the system exceeds 60 hours of original programming, within 10 business days after the verification by Cox of that fact, Cox shall pay TCCC additional operating funds of \$3,846*. As used in this paragraph, "programming" does not include announcements or schedules whose content consists primarily of character-generated written messages.

2.3 Matching Funds. In addition to the operating funds provided for under paragraphs 2.1 and 2.2, beginning in 1986, Cox will provide matching funds for public access operating funds obtained by TCCC from sources other than Cox, the City, or charges to public access users on a dollar for dollar basis, up to a maximum of \$100,000* in any calendar year. Cox will deposit such matching funds in TCCC's

General Account within 10 business days after verification by Cox that the funds to be matched have been deposited in that account.

2.4 Grant Funds. Cox will provide TCCC with \$190,000 per calendar year for a program of grants to users to assist them in development of public access programming. Cox will deposit funds for each grant in the TCCC Grant Trust Account within 10 business days after receiving a copy of the resolution of TCCC's Board of Directors awarding the grant(s), certified by the Secretary of TCCC.

2.5 Permanent Facilities. Cox will provide funds for the construction of, and lease to TCCC for a rental of \$1 per year public access studios, offices and related permanent facilities to be constructed on land to be provided by Cox adjacent to the MTC. The size and design of the permanent facilities will be determined by TCCC and the City; provided however, that funding by Cox under this paragraph shall not exceed \$600,000. If the amount spent to construct the permanent facilities is less than \$600,000, Cox will pay the difference between the construction cost and \$600,000 to TCCC.

2.6 Equipment. Cox will lease to TCCC for a rental of \$1 per year public access equipment with a total acquisition cost of \$600,000. Within 30 days after Mayor and Council approval of this Agreement, Cox will designate equipment from Cox's inventory (including but not limited to 2 production vans, downtown studio equipment, and public access training equipment) to be turned over to TCCC under this

paragraph, and will indicate the acquisition cost of each item of equipment so designated. Thereafter, TCCC will notify Cox of additional equipment it wishes Cox to acquire under this paragraph, and Cox will acquire it in the ordinary course of business, through normal channels of supply, and will notify TCCC of the acquisition cost of each item of equipment.

2.7 Channels. Cox will provide TCCC with eight television channels and one FM stereo radio channel on Cox's system, to be used for public access programming only. Cox agrees to provide additional television channels for public access when all existing public access television channels are filled, up to a maximum of 14 television channels for public access. For purposes of this paragraph, all existing public access television channels are filled when, on the average, each such channel carries not less than 12 hours of public access programming per day for one calendar month; provided, however, that after a program has been cablecast three times, subsequent showings are not included in this calculation; and further provided, that "programming" as used in this paragraph does not include announcements or schedules whose content consists primarily of character-generated written messages. Cox will provide an additional public access television channel within 30 days after verifying that all existing public access television channels are filled. Cox may change the number designation of public access channels on 60 days written notice to TCCC. Until completion of TCCC's permanent facilities, head-end

equipment for the public access channels will be located at Cox's facilities and operated by Cox personnel. Upon completion of TCCC's permanent facilities, Cox will provide at its own expense a link between the TCCC facilities located next to the MTC and Cox's system. Thereafter, all head-end equipment for the public access channels will be located at TCCC's facilities and operated by TCCC personnel. Public access head-end equipment is included in the equipment to be leased by Cox to TCCC under paragraph 2.6.

2.8 Consulting. For a period of one year after Mayor and Council ratification of this Agreement, Cox will provide TCCC with reasonable advisory and consulting services of Cox personnel, upon request, with reasonable advance notice.

2.9 Records. Within 30 days after Mayor and Council approval of this Agreement, Cox will turn over to TCCC all records from Cox's operation of public access, including but not limited to all documentation of contacts with potential access users, all lists of persons participating in Cox's training program, and all formats, outlines and instructional aids used in Cox's training program.

2.10 Limitation. With the exception of this Article Two, nothing in this Agreement or in the license obligates Cox to provide funding, equipment, facilities or services to TCCC in any amount for any purpose. The parties agree that provision of funding at the levels set forth in this Article Two, and the provision of equipment and services for public access as set forth in Exhibit 1, constitutes Cox's entire

obligation for public access under the license as amended contemporaneously with this Agreement.

2.11 Effect of License Termination, etc. Cessation of Cox's operation of its CATV system, whether by expiration, revocation, termination, suspension, transfer or for any other reason, shall terminate all of Cox's obligations under this Agreement; provided, however, that any termination under this paragraph will not affect the City's rights under the license agreement. If such cessation occurs before expiration of the 15-year term of the license, then TCCC may purchase from Cox all of the equipment and facilities leased by Cox to TCCC under paragraphs 2.5 and 2.6. The purchase price will be the greater of fair market value or depreciated book value, and will be payable in cash within 90 days after termination of Cox's license, or on such other terms as the parties may agree.

2.12 Transition.

A. The parties acknowledge that TCCC will need a period of time after Mayor and Council approval of this Agreement in order to build up the capacity to perform its obligations under this Agreement. To avoid disruption of service to the public, Cox will continue to perform these functions until TCCC certifies to the City that it is ready to assume them. During this transition period, Cox's obligations under paragraph 2.1 will be as follows:

Initially.....25% of the
amount stated in paragraph 2.1 (\$21,875.00).

Beginning on the first day of
the calendar quarter after TCCC

notifies Cox that it is ready
and able to perform all training
and outreach functions.....70% (\$61,250.00)

Beginning on the first day of
the calendar quarter after TCCC
notifies Cox that it is ready
and able to perform all public
access functions.....100% (\$87,500.00)

Provided, however, that such transition period shall
not exceed 6 months from Mayor and Council approval of this
Agreement, after which Cox will no longer be obligated to
perform any public access functions.

B. Until completion of the permanent facilities
provided for under paragraph 2.5, Cox will allow TCCC to use
the studio at Cox's downtown offices for public access
production, and will provide space at Cox's Grant Road
offices for public access production training classes.
Nothing in this subparagraph obligates Cox to provide TCCC
with office space or any facilities other than those specif-
ically described herein, and nothing in this subparagraph
limits Cox's right to use the facilities described herein
for any other purpose when they are not being used by TCCC.

C. Notwithstanding anything to the contrary in
paragraphs 2.2 and 2.3, Cox agrees to pay a total amount of
incentive and matching funds for each of the first two years
of this Agreement of not less than \$50,000. If the total of
incentive and matching funds paid before the anniversary
date is less than \$50,000, Cox will deposit the difference
in TCCC's general account within 30 days after the anniver-
sary.

2.13 Return Capability. Cox will provide TCCC with return capability as outlined in Exhibit 2, attached.

ARTICLE THREE

ROLE AND OBLIGATIONS OF TCCC

3.1 Level of Services. TCCC will maintain the level of public access service provided for in the license agreement and the proposal, as amended.

3.2 Operation of Channels. TCCC will operate the public access channels, equipment and facilities on a non-discriminatory basis, free from censorship of programming content.

3.3 Programming. TCCC will be fully responsible for programming the public access channels provided for in paragraph 2.7.

3.4 Disclaimer. TCCC will display with reasonable frequency on each operating public access channel, and with reasonable prominence in all TCCC facilities and on all TCCC advertisements, brochures, and publications, the following message:

"All Tucson public access channels are operated and controlled by Tucson Community Cable Corporation (TCCC). TCCC is an independent, non-profit corporation, and is not an agent or affiliate of Cox Cable Tucson or the City of Tucson. Cox Cable Tucson and the City of Tucson are prohibited by law from controlling the content of programs on public access channels. They are not responsible in any way for public access programming, and are not liable for any material cablecast on public access channels."

TCCC's letterhead shall carry the following message:

"Tucson Community Cable Corporation (TCCC) is an independent, non-profit community organization. TCCC is not an agent or affiliate of Cox Cable Tucson or the City of Tucson."

3.5 Technical Standards. TCCC recognizes that Cox is legally responsible for ensuring an acceptable level of technical quality pursuant to Federal Communication Commission (FCC) regulations of all programs cablecast on the access channels. TCCC will provide technicians to monitor said technical quality. TCCC is not obligated to cablecast any public access production which does not meet such acceptable level of technical quality. In the event that Cox determines that public access programming does not meet such acceptable level of technical quality, and so notifies TCCC, TCCC shall not cablecast such programming.

3.6 Equipment. TCCC will maintain all public access equipment in good operating condition, and will repair, fix and adjust such equipment promptly upon request by a system user.

3.7 Protection of Equipment. TCCC will set reasonable standards for the qualification of individuals to operate specified items of public access equipment, reflecting the interest of all public access users in protecting such equipment from damage.

3.8 Charges. The purpose of public access is to allow members of the community to communicate freely without interference and without charge, their activities, opinions

and ideas. Accordingly, TCCC will not charge any public

access user (a) for normal use of public access equipment,

(b) for participation in TCCC's basic video training

course, (c) for normal production assistance by TCCC employ-

ees, or (d) for cablecasting of any public access program-

ming. TCCC may require of public access users (a) a reser-

vation fee for public access facilities or equipment, (b)

financial arrangements (such as damage deposits or mandatory

purchase of insurance coverage) that will effectively place

upon the user personal financial responsibility for the

misuse of or accidental damage to public access equipment

while the equipment is under user's control, (c) a charge

for advanced training courses, and (d) payment for extracr-

ordinary production assistance (e.g., "needle drop" charges to

cover royalties for the use of copyrighted material in a

public access production). All fees, financial arrangements

and charges under this paragraph must be approved in advance

by the City. Nothing in this Agreement prohibits TCCC from

requiring public access users to supply their own videotape.

3.9 Access Uses Only. TCCC will develop rules and procedures governing public access channels and equipment to ensure that they will be used exclusively for public access programming and training purposes; provided, however, that TCCC may agree to allow Cox to use public access equipment from time to time for non-public access uses.

3.10 Production Assistance. TCCC will make production assistance available to all users. Charges for production assistance are governed by paragraph 3.8. A public access

user may request production assistance from TCCC. TCCC may require that dedicated public access equipment be operated by TCCC personnel only if the user is not qualified, or is unable to provide qualified personnel, to operate the items of dedicated public access equipment needed for its public access production. TCCC may not interfere with a public access user's control of program content.

3.11 Training and Outreach. TCCC will conduct training and outreach programs as described in Exhibit 1. TCCC's training program will have the capacity to train 75 people every five weeks.

3.12 Grant Program. TCCC will evaluate grant applications and award and administer all grant monies obtained by TCCC from Cox under paragraph 2.4 or the City for utilization of the public access channels. All notices to recipients and to the public of grant awards will identify the source of the funds being awarded (e.g., "Funding for this grant was provided by Cox Cable Tucson").

3.13 Advisory Function. TCCC will act as an advisory body to the Mayor and Council and the City Manager on cable television matters.

3.14 Indemnification. TCCC will indemnify and save harmless Cox and the City (including, but not limited to, the Mayor and Council, appointed boards and commissions, officials, officers, employees and insurance carriers), individually and collectively from all losses, claims, suits, demands, expenses, subrogations, attorney's fees or actions of any kind and nature arising out of the conduct,

acts, or omissions (a) of TCCC, its officers, directors, employees, contractors or agents, or (b) of any public access user, or (c) arising out of the use by any person of the facilities, equipment and funds provided for in this Agreement, or (d) arising out of the execution of this Agreement.

3.15 Insurance

A. TCCC will obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this Agreement. All policies will contain an endorsement providing that written notice be given to the City and Cox at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy. TCCC will provide the City and Cox with certificates of insurance within 14 days after Mayor and Council approval of this Agreement, and at any time thereafter as the City or Cox may reasonably request.

B. The comprehensive general liability insurance policies will include the City and Cox as additional insureds with respect to liability arising out of the performance of this Agreement.

C. TCCC will provide and maintain minimum insurance limits as follows:

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Workmans Compensation	Statute

Employers Liability	\$100,000
Comprehensive General	\$5,000,000
Liability Insurance*	Combined Single Limit
(i) Products & Completed Operations)
(ii) Blanket Contractual)
(iii) Advertising Liability) \$5,000,000
(iv) Broad Form Property Damage)
(v) Personal Injury)
Employees Blanket Bond	\$100,000
Broad Form Money & Securities	\$5,000
Director's & Officer's Liability	\$1,000,000

*Insurance coverage under this section shall include coverage of Cox and the City for any action (including defamation or invasion of privacy actions) arising out of any public access programming, and any action (under the First Amendment, the civil rights laws, or otherwise) based upon TCCC's failure or refusal to cablecast any public access programming.

3.16 Employment Practices. TCCC agrees to abide by the human relations provisions of the Tucson City Code, §17-21, in its hiring of personnel, and to comply with all provisions of the Tucson Code, State and Federal law with respect to all employment opportunities.

3.17 Conflict of Interest. TCCC agrees to abide by the provisions of A.R.S. Title 38, Article 5, "Conflict of